

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-303

In re Applications of

SKYLINE
BROADCASTERS, INC.
(hereafter "Skyline")

File No. BPH-910925MD

TOM SEABASE
(hereafter "Seabase")

File No. BPH-910926MB

CLOUD NINE
BROADCASTING, INC.
(hereafter "Cloud Nine")

File No. BPH-910926MI

For Construction Permit
for a New FM Station on Channel 292A
in Kalispell, Montana

HEARING DESIGNATION ORDER

Adopted: December 8, 1992; Released: December 23, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Skyline*. On April 8, 1992, Skyline filed a petition for leave to amend, proposing to reduce its tower height to accommodate the concerns of the Federal Aviation Administration (FAA). We will grant the petition for good cause shown and accept the amendment. Since the amendment was filed after expiration of the time period for filing amendments as of right, any comparative advantage resulting from the amendment will be disallowed. Additionally, we note that the amended tower height values for the proposed 260 foot (79.2 meter) tower do not agree with the FAA's determination. Specifically, the amendment shows a tower height above mean sea level of 1207 meters (3960 feet) while the FAA clearance lists a value of 1210 meters (3970 feet). Using the values specified in the FAA clearance, we find that the other application parameters -- the site elevation and the antenna radiation center heights -- would all be increased by 3 meters. This difference would not cause Skyline's application to violate any Commission rule. Nonetheless, Skyline must submit a clarifying amendment to the Administrative Law Judge within 30 days of the release of this Order to eliminate the noted discrepancy.

3. *Tower Height*. An engineering review of the Seabase and Cloud Nine applications reveals that the applicants propose to side-mount on the existing tower of translator Station K240BT, Kalispell, Montana (BLFT-890207TB). FCC and FAA records show that the translator tower's overall tower height above ground level (OHAGL) and

overall tower height above mean sea level (OHAMSL) as 45.1 meters and 1180.5 meters, respectively. However, both Seabase and Cloud Nine have specified the tower's OHAGL as 40 meters and OHAMSL as 1175 meters. Therefore, the applicants are required either to amend the tower height data specified in their respective applications to comply with FCC and FAA records or, if the heights specified in the application are the actual heights, file with the FAA (FAA Form 7460-1) to correct the tower height discrepancy.

4. Additionally, there is a possibility that the proposed FM antennas and transmission lines will disrupt the translator's directional antenna pattern because the FM antennas will be mounted above K240BT's antenna and the proposed FM transmission lines will be placed near K240BT's antenna. Accordingly, Seabase and Cloud Nine must submit an exhibit, including a statement from the K240BT antenna manufacturer, stating that the proposed antenna will have no adverse effect on the translator's directional antenna pattern.

5. *Residence Address*. Section II, Item 6 of FCC Form 301 (June 1989) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Seabase has not completed Item 6 correctly. Seabase's application gives a post office box number as the address for itself and for the residence of its sole principal, Tom Seabase. Accordingly, Seabase must submit as amendment which gives all the information required by Section II, Item 6 to the presiding Administrative Law Judge after this order is released.

6. *Late-Filed Amendment*. On April 30, 1992, after the last date for filing amendments as of right, Seabase filed a petition for leave to amend its application. Under Section 1.65 of the Commission's Rules, the petition will be granted, and the amendment accepted. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

7. *Comparative Coverage*. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. *Conclusion*. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. **ACCORDINGLY, IT IS ORDERED**. That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED. That Skyline shall submit the information, specified in Paragraph 2, to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED. That Seabase and Cloud Nine shall submit the information, specified in Paragraphs 3 and 4 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED. That Seabase shall submit an amendment which contains the information required by Section II, Item 6 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

13. IT IS FURTHER ORDERED. That the petitions for leave to amend filed by Skyline (4/8/92) and Seabase (4/30/92) ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein at paragraphs 2 and 6.

14. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED. That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

16. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within

the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau